

HON. BENJAMIN H. SETTLE
MAGISTRATE DAVID W. CHRISTEL

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

REBECCA J. LEEPER, an individual,

Plaintiff,

vs.

CITY OF TACOMA, a municipal
corporation; TEL C. THOMPSON, and
JOHN DOES 1-5, in their individual
capacities,

Defendants.

No. 3:20-cv-05467-BHS-DWC

RESPONSE TO PLAINTIFF'S
OBJECTIONS TO REPORT &
RECOMMENDATION

Noted for: July 9, 2021

In response to the Magistrate Judge's report and recommendations, Plaintiff filed objections, arguing that the Magistrate Judge failed to construe the evidence in the light most favorable to the Plaintiff and failed to undertake the correct legal analysis. To the contrary, the Magistrate's report represents a careful, balanced review of the competent evidence in the record, one that construes all admissible evidence in the light most favorable to the Plaintiff. In reality, many of Plaintiff's objections to the Magistrate's report stem from the Magistrate's careful adherence to the summary judgment standard. As explained by the Supreme Court, only evidence that meets the basic requirements of admissibility may be considered on summary judgment. Celotex Corp. v. Catrett, 477 U.S. 317, 34, 106 S. Ct. 2548, 91 L. Ed. 2d

265 (1986). See also Fed. R. Civ. Pro. 56(c)(4) (“An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.”). In opposition to the defendants’ motion for summary judgment, Plaintiff offered inadmissible hearsay and rank speculation, neither of which is sufficient to overcome a properly supported motion for summary judgment. See, e.g., Stonefire Grill, Inc. v. FGF Brands, Inc., 987 F. Supp. 2d 1023, 1037 (C.D. Cal. Aug. 16, 2013)(“...the Court may not consider inadmissible hearsay evidence which could not be presented in an admissible form at trial.”) Moreover, Plaintiff has not established that the Magistrate applied the wrong legal standard to her claims or misconstrued the correct legal standards. Instead, Plaintiff repeatedly asserts that the “evidence” she cites creates a material question of fact. It does not.

In ruling on the defendants’ motion for summary judgment, the Magistrate correctly rejected contentions and arguments for which there was no competent evidence and decided the motion on what remained. In so doing, the Magistrate correctly determined that Plaintiff had not adduced sufficient evidence to establish her prima facie case and therefore summary judgment was appropriate. In deciding such a motion, the question is not whether there is literally no evidence, but “whether there is any upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the [burden] of proof is imposed.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202 (1986). This is so because, in a summary judgment motion, the “existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be evidence on which a jury could reasonably find for the plaintiff.” Anderson, 477 U.S. at 252.

1 The Magistrate correctly decided the defendants' motion and the report and
2 recommendation should be adopted by the Court.

3 DATED this 8th day of July, 2021.

4 WILLIAM C. FOSBRE, City Attorney

5 By: /s/ Jean Homan
6 JEAN P. HOMAN, WSBA #27084
7 Deputy City Attorney
8 Attorney for Defendant City of Tacoma

9 LASHER HOLZAPFEL SPERRY
& EBBERSON, PLLC

10 By: /s/ Shannon Trivett
11 SHANNON L. TRIVETT, WSBA #46689
12 Attorney for Defendant Tel C. Thompson
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Attorneys for Plaintiff Joshua R. Brumley Brumley Law Firm, PLLC 1303 Central Avenue South, Suite 201 Kent, WA 98032 Joshua@Brumleylawfirm.com Nicholas B. "Cole" Douglas Loren A. Cochran Cochran Douglas Law 4826 Tacoma Mall Blvd, Suite C Tacoma, WA 98409 loren@cochrandouglas.com cole@cochrandouglas.com	Attorney for Def. Thompson Shannon L. Trivett Robin Williams Phillips, Lasher Holzapfel Sperry & Ebberspn, PLLC Attorneys at Law 2600 Two Union Square 601 Union Street Seattle, WA 98101 trivett@lasher.com
--	--

DATED July 8, 2021 at Tacoma, Washington.

/s/Gisel Castro
Gisel Castro, Legal Assistant
Tacoma City Attorney's Office
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5499
Fax: (253) 591-5885